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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA  
SIXTH APPELLATE DISTRICT

THE PEOPLE,

Plaintiff and Respondent,

v.

ANTONIO TORRES,

Defendant and Appellant.

H044687

(Santa Clara County

Super. Ct. No. CC599313)

**I. INTRODUCTION**

Defendant Antonio Torres pleaded guilty to felony forgery based on his possession of blank and unfinished checks (Pen. Code, § 475, subd. (b)).<sup>1</sup> Defendant was placed on probation, and his probation was later terminated.

Defendant subsequently filed a petition with the trial court pursuant to section 1170.18, subdivision (f), which was enacted as part of Proposition 47, to have his felony conviction redesignated as a misdemeanor. He contended that, because the checks were blank and unfinished, the value of the checks were under \$950. The trial court determined that defendant had not made a sufficient showing of value and denied the petition without prejudice to defendant refiling a petition with the facts necessary to establish a prima facie case of eligibility for relief.

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<sup>1</sup> All further statutory references are to the Penal Code unless otherwise indicated.

On appeal, defendant contends that the trial court erred by denying the petition because he presented sufficient evidence that the value of the checks did not exceed \$950. Alternatively, he contends that the matter should be remanded for an evidentiary hearing regarding the value of the checks.

For reasons that we will explain, we will affirm the trial court's order.

## **II. BACKGROUND**

### ***A. The Forgery Conviction***

In 2005, defendant was charged by complaint with multiple counts and allegations. He pleaded guilty to all counts and admitted the allegations. Relevant to this appeal defendant admitted, based on his guilty plea to count 3, that he violated section 475, subdivision (b) by “possess[ing] a blank and unfinished checks and real and fictitious checks, with the intention . . . of completing the same and facilitating the completion of the same, in order to defraud another person.” In 2006, the trial court suspended imposition of sentence and placed defendant on probation. Defendant's probation was terminated in 2007.

### ***B. The Petition for Redesignation as a Misdemeanor***

In 2014, voters approved Proposition 47, the Safe Neighborhoods and Schools Act. (*People v. Gonzales* (2017) 2 Cal.5th 858, 863 (*Gonzales*).) Proposition 47 “reduced the punishment for several crimes that were previously punished as felonies.” (*People v. Romanowski* (2017) 2 Cal.5th 903, 906 (*Romanowski*).) Relevant here, the punishment for felony forgery under section 475, subdivision (b), is set forth in section 473, which was amended by Proposition 47. (See § 1170.18, subd. (a).) Section 473 now provides that “forgery relating to a check” is punishable as a misdemeanor “where the value of the check . . . does not exceed nine hundred fifty dollars (\$950).” (§ 473, subd. (b).) Proposition 47 also added section 1170.18, which permits a defendant to petition to have his or her felony conviction resentenced to or

redesignated a misdemeanor. (§ 1170.18, subds. (a), (b), (f) & (g); *Gonzales, supra*, at p. 863.)

In March 2017, defendant filed a petition to redesignate his felony forgery conviction (§ 475, subd. (b)) as a misdemeanor. In support of the petition, defendant provided an excerpt from a police report, a copy of the complaint, and a declaration from counsel. According to the police report, defendant had “[o]n top of a mini refrigerator . . . a complete book of Bank of the West checks. The checks were issued to ‘South Bay Plumbing.’ ” Count 3 of the complaint, to which defendant pleaded guilty, alleged that defendant “possess[ed] a blank and unfinished checks and real and fictitious checks, with the intention . . . of completing the same and facilitating the completion of the same, in order to defraud another person.” Based on these documents, defendant’s counsel asserted in a declaration that “the value of the checks in connection with Count 3 were valued under \$950 because the checks were presumably blank and unfinished.” Defendant requested a hearing on the petition for redesignation only if the petition was opposed by the prosecution.

In a written response, the prosecutor contended that the petition should be denied because defendant had outstanding warrants and there was “insufficient evidence that [the] value is under [\$]950.”

### ***C. The Trial Court’s Order***

In a May 2, 2017 written order, the trial court denied the petition. The court stated, “Defendant has not set forth a prima facie case of eligibility for the requested relief because he has not alleged any facts to establish the value of the item in question, and that value does not appear in the record of conviction.” The court stated that the denial was without prejudice to defendant “refil[ing] a petition setting forth the necessary facts to establish a prima facie case of eligibility.”

### III. DISCUSSION

Defendant contends that the trial court erred by denying his petition for redesignation because he “presented sufficient evidence that the value of the property did not exceed \$950.” Alternatively, he contends that the matter should be remanded for an evidentiary hearing regarding the value of the checks.

#### ***A. Burden of Proof Regarding a Proposition 47 Petition***

On a Proposition 47 petition, the defendant has the ultimate burden of proving eligibility for redesignation as a misdemeanor. (*Romanowski, supra*, 2 Cal.5th at p. 916.) “In some cases, the uncontested information in the petition and record of conviction may be enough for the petitioner to establish this eligibility. . . . But in other cases, eligibility for resentencing may turn on facts that are not established by either the uncontested petition or the record of conviction. In these cases, an evidentiary hearing may be ‘required if, after considering the verified petition, the return, any denial, any affidavits or declarations under penalty of perjury, and matters of which judicial notice may be taken, the court finds there is a reasonable likelihood that the petitioner may be entitled to relief and the petitioner’s entitlement to relief depends on the resolution of an issue of fact.’ [Citations.]” (*Ibid.*)

“We review the trial court’s construction of Proposition 47 de novo. [Citation.] We review any factual findings in connection with the court’s ruling on the petition for substantial evidence. [Citations.]” (*People v. Salmorin* (2016) 1 Cal.App.5th 738, 743 (*Salmorin*).)

#### ***B. Value of a Blank or Unfinished Check***

Defendant contends that he provided evidence with his petition reflecting that the checks were blank, and therefore the value of the checks were less than \$950. He argues that forged or fraudulent checks, whether they are blank or have an amount written on them, are void and valueless under the law. Defendant further contends that there is “no market for blank checks” because “the owner can stop payments for the checks” and thus

“the check becomes virtually impossible to cash.” According to defendant, a fraudulent check is only “worth the value of the paper it is printed on.”

The Attorney General contends that if defendant’s position is accepted – that blank checks are never worth more than the paper they are printed on – then the fraudulent possession of blank checks could never be a felony. According to the Attorney General, this is contrary to the voters’ intent to punish serious offenses, which includes the possession of a blank check with the intent to write a fraudulent check worth more than \$950. The Attorney General also argues that, to the extent the value is based on the amount that the defendant intended to defraud another person, defendant failed to present evidence on this issue. The Attorney General further contends that, in the context of the theft of credit card information, the California Supreme Court has held that the determination of whether the \$950 threshold has been met is based on the fair market value of the property. In this case, because defendant did not offer any evidence of the fair market value of the checks, the Attorney General contends that defendant failed to meet his burden.

In reply, defendant contends that his trial counsel’s declaration in support of the petition encompassed the argument that the fair market value of the checks was less than \$950. To the extent there was a factual dispute on that issue, defendant argues that the trial court should have held an evidentiary hearing.

Defendant was convicted of forgery under section 475, subdivision (b), which states: “Every person who *possesses any blank or unfinished check*, . . . whether real or fictitious, with the intention of completing the same or the intention of facilitating the completion of the same, in order to defraud any person, is guilty of forgery.” (Italics added.) As alleged in the complaint and admitted by defendant’s guilty plea, defendant “possess[ed] a blank and unfinished checks and real and fictitious checks, with the intention . . . of completing the same and facilitating the completion of the same, in order to defraud another person.”

In order for defendant's forgery conviction to be eligible for redesignation as a misdemeanor, the "value of the check" must be \$950 or less. (§ 473, subd. (b).) Section 473 does not expressly state how to determine the value of a check, particularly a blank or unfinished check. The issue of the valuation of a forged check (§ 475, subd. (a)), where the check had a face value of \$1,500, is currently before the California Supreme Court. (*People v. Franco* (2016) 245 Cal.App.4th 679, review granted June 15, 2016, S233973 (*Franco*).)

This court has held that "the term 'value' in Penal Code section 473 refers to the actual monetary worth of the check—that is, the amount the defendant could obtain for the check, not the amount for which it was written." (*People v. Lowery* (2017) 8 Cal.App.5th 533, 541, review granted April 19, 2017, S240615 (*Lowery*), and further action deferred pending consideration and disposition in *Franco, supra*, 245 Cal.App.4th 679, review granted June 15, 2016, S233973; see Cal. Rules of Court, rule 8.1115(e)(1); but see *Salmorin, supra*, 1 Cal.App.5th at pp. 744-745 ["value" within the meaning of § 473, subd. (b) means the "stated value or face value of the check," which "may or may not correspond" to the market value].) In reaching this conclusion, this court in *Lowery* relied on the ordinary meaning of the word value, which typically refers to actual monetary worth, as measured by fair market value. (*Lowery, supra*, at p. 539.) This court determined that this construction of value was consistent with the valuation of property for purposes of theft under the Penal Code. (*Lowery, supra*, at p. 539; § 484, subd. (a) [the value of property obtained by theft shall be "the reasonable and fair market value"].) This court further determined that a statutory construction requiring monetary worth was consistent with voters' intent because the voter information guide for Proposition 47 explained that " 'forging a check *worth* \$950 or less' " would be a misdemeanor. (*Lowery, supra*, at p. 540.)

Defendant in this case contends that the value of a forged check is limited to the intrinsic value of the paper it is written on because a forged check is a nullity.

We are not persuaded by defendant's argument. The cases cited by defendant in support of this argument predate Proposition 47 and do not involve the statutory construction of "value" in section 473, subdivision (b). Significantly, if the value of a forged check is never greater than the value of the paper it is written on, the \$950 threshold for misdemeanor versus felony forgery in section 473, subdivision (b) would be meaningless, because the value of the paper on which any check is written would likely always be less than \$950. "Courts should give meaning to every word of a statute if possible, and should avoid a construction making any word surplusage. [Citation.]" (*Arnett v. Dal Cielo* (1996) 14 Cal.4th 4, 22; accord *Lowery, supra*, 8 Cal.App.5th at pp. 540-541, review granted.)

We are also not persuaded by defendant's unsupported argument that there is no market for blank checks. In making this argument, defendant seeks to distinguish *Romanowski, supra*, 2 Cal.5th 903. In *Romanowski*, the California Supreme Court held that, with respect to the theft of access card account information (§ 484e, subd. (d)), such as credit and debit card information, the value of the information for purposes of the \$950 threshold (§ 490.2, subd. (a) [petty theft]) must be based on the " 'reasonable and fair market value' " of the information. (*Romanowski, supra*, at p. 906.) The *Romanowski* court further stated that a trial court "may consider evidence related to the possibility of illicit sales when determining the market value of stolen access card information" (*ibid.*), and that the value of the plastic of a stolen credit card "is hardly the value that the market would place on stolen credit card information" (*id.* at p. 915).

In this case, defendant contends that "there is no market for blank checks," in contrast to access cards, because payment may be stopped on a check, resulting in the check being "virtually impossible to cash." However, a credit or debit cardholder may report the card as stolen to the issuer of the card, with the card similarly becoming "virtually impossible" to use. In this case, defendant does not cite any facts in the record establishing that no market exists for blank checks. The fact that defendant was in

possession of a book of blank or unfinished checks that did not belong to him suggests that the checks may have some value beyond the paper on which they were printed.

In sum, we conclude that the “value” of a blank or unfinished check within the meaning of section 473, subdivision (b) is not limited to the value of the paper on which the check is printed. (See *Romanowski*, *supra*, 2 Cal.5th at p. 906; *Lowery*, *supra*, 8 Cal.App.5th at p. 541, review granted; contra, *People v. Gonzales* (2016) 6 Cal.App.5th 1067, 1072 [summarily concluding that a conviction for possession of blank checks (§ 475, subd. (b)) was eligible for misdemeanor redesignation because “blank checks . . . do not have any face value, and thus . . . come within the ambit of section 473(b)”], review granted February 15, 2017, S240044, on a different issue.) We further conclude that, because defendant did not present any evidence regarding the value of the checks he possessed, beyond the fact that the checks were blank and unfinished, the trial court did not err in finding that he failed to make a prima facie case of eligibility for redesignation of his felony forgery conviction as a misdemeanor. (*Romanowski*, *supra*, at p. 916 [evidentiary hearing required only if the defendant establishes “a reasonable likelihood” that the defendant may be entitled to relief].) We observe that the trial court’s denial of defendant’s petition was without prejudice to him “refil[ling] a petition setting forth the necessary facts to establish a prima facie case of eligibility.”

#### **IV. DISPOSITION**

The May 2, 2017 order is affirmed.

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BAMATTRE-MANOUKIAN, J.

WE CONCUR:

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ELIA, ACTING P.J.

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MIHARA, J.